87-635

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

STATE OF OKLAHOMA, ex rel,
OKLAHOMA TAX COMMISSION,
Petitioner,

v.

JAN GRAHAM, et al,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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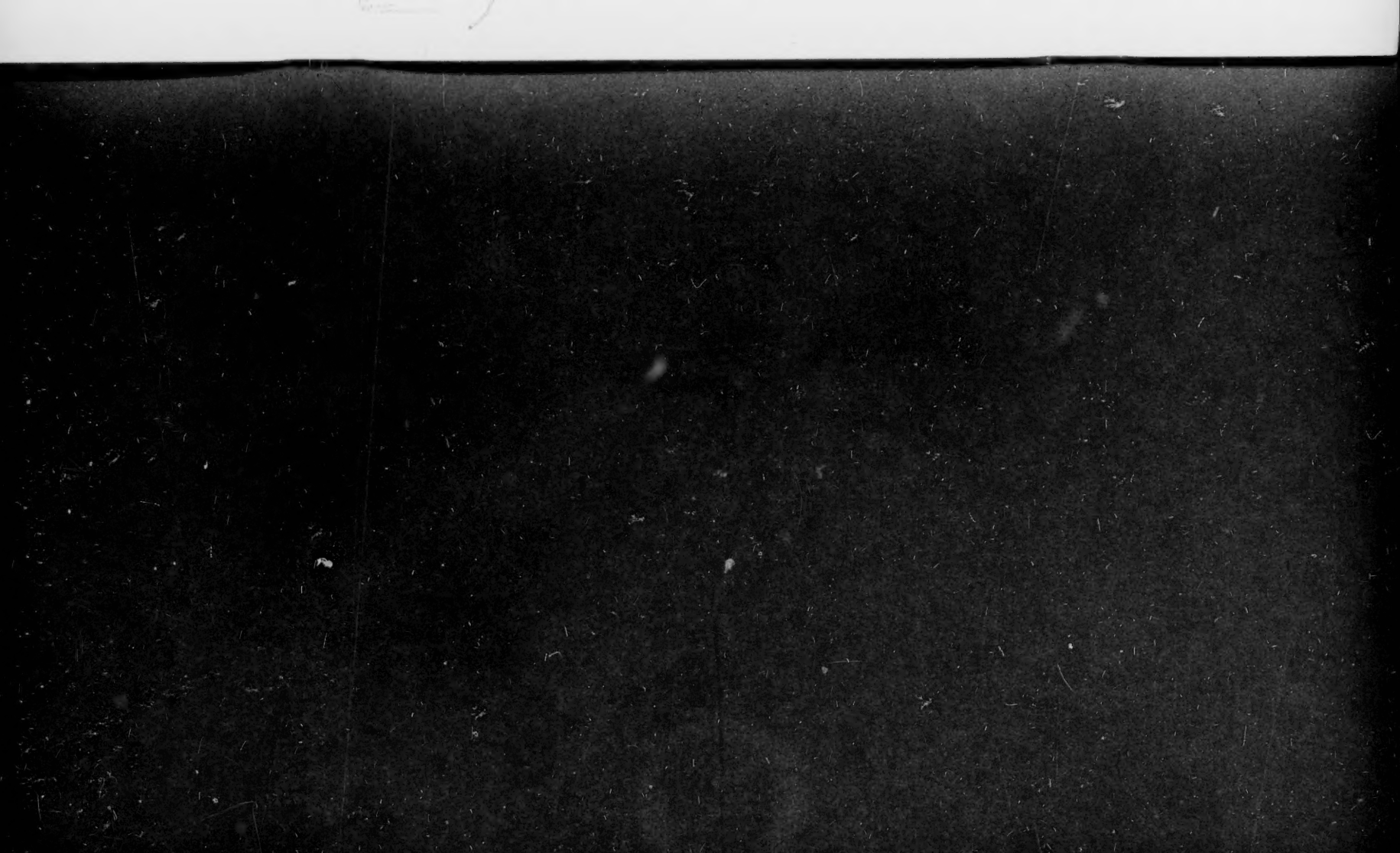

QUESTIONS PRESENTED

I. May the federal District courts look to the substance of a complaint where a necessarily federal cause of action is pleaded in terms of state law to find federal question removal jurisdiction?

II. Do the courts have jurisdiction over federally recognized Indian tribes absent congressional or tribal waiver of sovereign immunity from unconsented suits?

LIST OF PARTIES

The petition is State of Oklahoma ex. rel. Oklahoma Tax Commission. The respondents are Chickasaw Nation and its employee, Jan Graham.

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STATUTES INVOLVED

28 U.S.S. 1331 "The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States."

28 U.S.C. 1441 (b) "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."

STATEMENT OF THE CASE

The Chickasaw Nation of Oklahoma, one of the Five Civilized Tribes, is federally recognized and protected. It was removed to South Central Indian Territory in the early nineteenth century. Sulphur, Oklahoma is located within the Tribe's original territory after removal and within its present day governmental territory according to its constitution. (App. A Preamble) The Tribe purchased the Chickasaw Motor Inn at Sulphur, Oklahoma in 1972 as a tribal economic development project. The title to the lands on which the motel is situated is vested in the United States of America in trust for the Tribe. Pursuant to an Act of the Chickasaw Legislature, the Tribe was engaging in the sales of tobacco products and operating a small bingo game on the motel premises when this action was filed in the state district court on October 18, 1985. (App. B) It was not collecting nor paying state sales and excise taxes on tobacco and bingo receipts.

This action was commenced in the District Court of Murray County, Oklahoma. The prayer for relief in the State's complaint, sought to temporarily and permanently enjoin the Tribe from engaging in sales

of tobacco, operating the bingo game and from conducting any business at the Chickasaw Motor Inn and Restaurant until complete and accurate reports are filed with, and all taxes paid to, the Oklahoma Tax Commission. The state district court immediately granted an ex parte temporary order enjoining the Chickasaw Nation and its motel manager, Jan Graham, from selling unstamped cigarettes and operating bingo games.

The Tribe and defendant Graham removed the action to the United States District Court for the Eastern District of Oklahoma. The State moved to remand to the state court contending that there was no federal question jurisdiction. Its motion was overruled. The Tribe and defendant Graham then moved to dismiss for lack of jurisdiction on the basis of the Chickasaw Nation's sovereign immunity from unconsented suits. The Court sustained the motion to dismiss. The decision was affirmed by the United States Court of Appeals for the Tenth Circuit.

The sole issues addressed in the trial court and the Tenth Circuit court were (1) whether a sufficient federal question was presented to support removal of this action to the federal district court and (2) whether the action should have been dismissed as being barred by tribal sovereign immunity from unconsented suits.

ARGUMENT

This is an action by the State of Oklahoma to enforce its tax laws against an Indian Tribe. For jurisdictional reasons, neither lower court reached the merits of the State's cause of action. It is noted that the Petition for Writ of Certiorari seeks to interweave the merits of petitioner's action with the issues above stated. This tactic was employed by petitioner in both lower courts but, properly, those courts specifically and emphatically declined to address issues not

raised by the motion to remand and to dismiss. (Petitioner's App. A-7 and A-21) The lower courts did not decide that the State could not enforce its tax laws against the Tribe. They did decide that removal from the state district court was proper because the substance of the relief sought by the State of Oklahoma supported federal question removal jurisdiction. Having decided it had federal question jurisdiction, the court then dismissed on the basis of the Tribe's sovereign immunity from unconsented suit.

The two lower courts kept those two issues in perspective while the State sought to mesh issues going to the merits of their lawsuit. In its petition to this Court, the State makes no pretense of addressing the only two issues before the Circuit Court[1] and simply argues the merits of its case i.e. the right to enforce its tax laws against an Indian Tribe. This brief will focus on the decision from which this appeal is brought.

I. THE CIRCUIT COURT'S FINDING THAT FEDERAL QUESTION JURISDICTION EXISTED FOR PURPOSES OF REMOVAL IS CONSISTENT WITH SETTLED FEDERAL LAW

The State's complaint is carefully couched in terms of state law. It made no allegation concerning the basis for the right to the relief it sought except to rely on the state statutes quoted therein. Under well-established federal law, the states may not grant themselves authority over Indian Tribes except where congress has expressly provided that state laws shall apply. *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 171 (1973) "The Constitution vests the Federal Government with exclusive authority over relations with Indian Tribes." *Montana v. Blackfeet*

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[1] It should be noted that petitioner does not cite a single authority dealing with federal question jurisdiction for removal of tribal sovereign immunity from unconsented suit.

Tribe of Indians, 471 U.S. 2399, 2402. Citing Article I, §8, U.S. Const. and *Oneida Indian Nation v. County of Oneida,* 414 U.S. 661, 670. "....Indians stand in a special relation to the federal government from which the states are excluded unless Congress has manifested a clear purpose to terminate [a tax] immunity and allow states to treat Indians as part of the general community." *Bryan v. Itasco County,* 426 U.S. 373, 392, quoting from *Oklahoma Tax Comission v. United States,* 319 U.S. 598, 613-614. There must be some federal basis on which the states can impose their laws on Indian Tribes. Likewise, there must be some federal basis on which the State of Oklahoma can apply its tax laws to the Chickasaw Nation. *National Farmers Union Ins. Cos. v. Crow Tribe,* 471 U.S. 845, 852. The right to tax an Indian Tribe, under federal law, is an essential element of the State's complaint and is the substance of this lawsuit whether stated therein or not. The Circuit Court said:

> "The substance of the State's claim embraces the central jurisdictional issue we must decide in this appeal. Indeed, when we strip the State's complaint of its statutory baggage, we are left with an action in which the State is attempting to enforce an essential element of its sovereignty, the power to tax, over an Indian Tribe.
>
> This recognition underscores the implicit federal question lodged in the State's complaint and focuses our inquiry....." (Petitioner's App. A-4)

Even though a necessarily federal cause of action is couched in terms of State law, the federal removal court may look to the substance of the claim to find federal question jurisdiction. *Avco Corporation v. Aero Lodge No. 735, International Association of*

Machinists & Aerospace Workers, 390 U.S. 557 (1968); *Wright-Miller-Cooper Federal Practice and Procedure*, Volume 14A, pages 243 and 541.

It is well settled that federal question jurisdiction exists if it arises under federal common law formulated by federal judicial decisions. *Oneida*, supra at p. 233-236; *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972). State taxation of an Indian Tribe is an incursion upon and, in effect, a divestiture of an aspect of the Tribe's sovereignty. Whether such incursion is permissible must be resolved by reference to federal law and, therefore, "is an action 'arising under' federal law within the meaning of §1331". *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845 (1985). The criteria for federal question jurisdiction under 28 U.S.C. 1331 is applicable to removal jurisdiction under 28 U.S.C. 1441(b).

The Circuit Court correctly looked to the substance of the State's claim and determined that it was rooted in federal law. This is entirely consistent with this Court's decisions and does not warrant plenary review.

Petitioner urges the review of the Tenth Circuit Court's decision on the premise that *Blackfeet* should not have been relied by the Court in finding an implicit federal question in the State's complaint. Rather, the State contends that *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973) should have been controlling on the issue of removal jurisdiction. Possibly *Mescalero* may be relevant to the issues presented by the merits of petitioner's complaint, but not on the issue before the lower court i.e. federal question removal jurisdiction. However, assuming arguendo, that the issue of on or off reservation activity is a controlling factor, *Mescalero* is distinguishable from this case.

Here, the Chickasaw Nation was engaged in a tribal enterprise on lands within its historical terri-

tory or former reservation held in trust for the Tribe by the United States which is considered Indian country or a reservation under the tests enunciated by this court. *United States v. Pelican,* 232 U.S. 442, 449 (1914); *United States v. McGowan,* 302 U.S. 535, 538-39 (1938); *United States v. John,* 437 U.S. 634, 649 (1978)[2]

The Mescalero case did not involve tribally owned lands held in trust by the United States as stated by the petitioner on page 7 of its petition. The Mescalero Apache Tribe was leasing lands from the United States Forest Service to operate a ski resort. *Mescalero* is also distinguishable from this case because it did not involve federal question removal. The Tribe lodged appeals through the state administrative and judicial system voluntarily submitting its grievance to state court jurisdiction. This Court reviewed the decision of the New Mexico Court of Appeals and found the activity engaged in was subject to taxation because it was occurring on off-reservation lands.

Petitioner erroneously states that there are not reservations in Oklahoma. Most, if not all, of the Indian Tribes in Oklahoma own lands held in trust by the United States. Under the tests laid down in *Pelican, McGowan,* and *John,* each of these lands are reservations. If petitioner's reasoning were followed, the State of Oklahoma would have jurisdiction over all Indian Tribes within its borders and tribal sovereignty would be abolished. That theory is simply not supported by any decision of this Court.

II. THE LOWER COURT FOLLOWED LONG STANDING FEDERAL POLICY AND THE DECISIONS OF THIS COURT HOLDING

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[2] This Court in Pelican laid down the test for defining Indian Country as being tribally owned lands "devoted to Indian occupancy...validly set apart for the use of Indians." Then in *McGowan* the court said the label was immaterial if the lands were set aside for use by Indians. *John* held that trust status created a "reservation".

THAT INDIAN TRIBES ARE IMMUNE FROM SUIT IN STATE OR FEDERAL COURTS ABSENT CONGRESSIONAL OR TRIBAL WAIVER

Having correctly decided that federal question jurisdiction for removal was present, the lower court then considered whether the Chickasaw Nation's sovereign immunity from unconsented suit mandated dismissal. At no time during the course of this litigation and certainly not in its petition has the state presented a single decision by this or any other court for the proposition that an Indian Tribe can be sued in any court absent unequivocal congressional or tribal waiver of immunity.

The law is clear and as old as this nation. Indian tribes are possessed with the common-law immunity from suit accorded sovereign powers. *Worcester v. State of Georgia,* 31 U.S. 515, 559 (1832); *Turner v. United States,* 248 U.S. 354, 358 (1919); *United States v. United States Fidelity & Guaranty Co.,* 309 U.S. 506, 512-513 (1940); *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978). This immunity is subject only to the superior and plenary control of Congress. United States Fidelity & Guaranty, supra, at p. 512; *United States V. Wheeler,* 435 U.S. 313, 323 (1978). Indian sovereign immunity is co-extensive with that of the United States. *United States Fidelity & Guaranty Co.,* supra, at 514. An Indian Tribe may waive its sovereign immunity but such waiver "cannot be implied but must be unequivacally expressed". *Martinez,* supra, at 58.

The Circuit Court, following the longstanding teachings of this Court, found no allegation in the complaint alleging congressional or tribal waiver of immunity affirmed the trial court's dismissal as to the Chickasaw Nation.

The lower court, likewise, affirmed the dismissal as to the tribal employee, Jan Graham, based upon the

rule in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 687 (1949) and said, "the state cannot avoid the doctrine of sovereign immunity by nominally suing a tribal officer when the suit in substance is against the sovereign". Consistent with the rule in both the Ninth and Tenth circuits, the lower court held that tribal immunity extends to tribal officials when acting in their official capacity and within the scope of their authority. *United States v. Oregon,* 657 F2d 1009, 1012 N. D. (9th Cir. 1981); *Tenneco Oil Co. v. Sac & Fox Tribe,* 725 F2d 572, 574 (10th Cir. 1984). The Court further found that the relief sought by the State against the individual tribal official would impermissibly operate directly against the sovereign rather than the individual. *Dugan v. Rank,* 372 U.S. 609, 620 (1963). This holding is, likewise, consistent with the mandate of this Court and does not merit review.

CONCLUSION

The states would like to litigate all of their disputes with Indian tribes in their own courts. Conversely, the Chickasaw Nation would like to litigate this dispute in the Judicial Department of the Chickasaw Nation. But the relations between Indian tribes and the states are not defined and governed by state law nor tribal law. It is regulated by federal law.

Certainly, the very essence of the State's complaint, that is, the absence of Indian sovereign immunity from taxation and unconsented suit must arise under federal law. The lower court was correct in sustaining a finding of removal jurisdiction.

It is the petitioner that seeks a new and unprecedented ruling from this court. It would have this court to abandon almost 200 years of precedent and give the state courts jurisdiction over federally protected Indian tribes, to the exclusion of the federal judiciary, to enforce the states' laws against them. This would

require this court to engage in legislating in an area constitutionally reserved to the Congress. Thus far, the Congress has declined to do so and this Court should also refrain from so doing.

This matter was properly dismissed by the trial court. The tenth circuit court was correct in affirming the dismissal and this court should deny certiorari.

Respectfully submitted.

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APPENDIX A

CONSTITUTION OF THE CHICKASAW NATION OF OKLAHOMA

PREAMBLE

We, the people of the Chickasaw Nation, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our own form of government, do, in accordance with the first, second, fourth and seventh articles of the Treaty between the United States, the Choctaws and Chickasaws, made and concluded at Washington City, June 22, A.D. 1855, and the Treaty of April 28, A.D. 1866, ordain and establish this Constitution for our government, within the following limits, to-wit:

Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles on a straight line below the mouth of False Washita, thence running a northwesterly course along the main channel of said bayou to the junction of the three prongs of said bayou nearest the dividing ridge between Washita and Low Blue Rivers, as laid down on Captain R.L. Hunter's map; thence northerly along the eastern prong of said Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red River and thence down Red River to the beginning;

Provided; however, if a line running due north from the eastern source of Island Bayou to the main Canadian, shall not include Allen's or Wapanucka Academy within the Chickasaw District, then an off-set shall be made from said line, so as to leave said academy two miles within the Chickasaw District, north, west and south from the lines of boundary.

ARTICLE I
NAME

The name of this body shall be "the Chickasaw Nation."

ARTICLE II
CITIZENSHIP

Section 1. This Chickasaw Nation shall consist of all Chickasaw Indians by blood whose names appear on the final rolls of the Chickasaw Nation approved pursuant to Section 2 of the Act of April 26, 1906, (34 Stat. 137) and their lineal descendants.

Section 2. The Tribal Legislature shall have the power to enact ordinances governing future citizenship and loss of citizenship in the Chickasaw Nation.

ARTICLE III
RIGHTS OF SUFFRAGE

Section 1. All citizens eighteen (18) years of age or older shall be deemed qualified electors under the authority of this Constitution; provided, they have duly registered to vote.

Section 2. No enrolled member of another tribe or person who votes as a citizen or member of another tribe shall be eligible to vote.

ARTICLE IV
BILL OF RIGHTS

Section 1. Nothing in this Constitution shall be interpreted in a way which would change the individual rights and privileges the tribal members have as citizens of the Chickasaw Nation, the State of Oklahoma, and the United States of America.

Section 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they

have at all times the inalienable right to alter, reform or abolish their form of government in such a manner as they may think expedient; provided, such action is taken pursuant to this Constitution.

Section 3. No religious test shall ever be required as a qualification for any office of public trust in this Nation.

Section 4. Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that privilege, and no law shall ever be passed curtailing the liberty of speech, or of the press.

Section 5. The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with powers of government; for redress of grievances or other purposes, by address, or remonstrance.

ARTICLE V
DIVISION OF THE POWERS OF GOVERNMENT

Section 1. The powers of the government of the Chickasaw Nation shall be divided into three (3) distinct departments: 1. Legislative 2. Executive 3. Judicial. No person or collection of persons, being one of those departments, shall exercise any power properly attached to either of the others.

Section 2. The officers of the Nation are to include all elective officials.

ARTICLE VI
LEGISLATIVE DEPARTMENT

Section 1. The Legislative authority of the Chickasaw Nation shall be vested in the Tribal Legislature.

Section 2. Members of the Tribal Legislature must be citizens of the Nation and have been residents of the Nation for at least one (1) year and of their respective district for at least six (6) months immedi-

ately preceding the election. They must remain residents of their elected district during the tenure of their office. They must be registered to vote and be at least twenty-five (25) years of age to serve as members of the Tribal Legislature.

Section 3. The Tribal Legislature shall consist of thirteen (13) members to be elected from the following districts according to an apportionment plan prescribed by the Tribal Legislature: Panola, Pickens, Tishomingo, Pontotoc. The district boundaries are as follows:

Panola District — Commencing at the mouth of Island Bayou, on the north bank of Red River, thence up said bayou to the line between the Chickasaws and Choctaws, thence along said line to Blue River, then up Blue River to the road that leads from Fort Washita to Fort Smith, where it crosses Blue River at Andrew Colbert's, thence along said road to Hatsborough, thence along the road that leads from Hatsborough to Tiner's, where it crosses Washita River, thence down said river to where it empties into Red River, thence down said river to the beginning point.

Pickens District — Commencing on the north bank of Red River, at the mouth of Washita River, thence up Red River to the 98th Meridian Line, thence north along said line to where it crosses Washita, down Washita to the beginning point.

Tishomingo District — Commencing where the road crosses Blue River that leads from Fort Washita to Fort Smith, at Andrew Colbert's, thence up Blue River to the fork above the old Dragoon crossing, thence up the eastern prong to the road which leads from Fort Arbuckle to Fort Smith, thence along said road to the crossing of the Washita River, thence down said river to the line of the Panola District, thence along said line to the beginning point.

Pontotoc District — Commencing on the east bank of Blue River, where the line crosses which runs between the Chickasaws and Choctaws, thence along said line to the Canadian River, thence up said river to the 98th Meridian Line, thence south along said line to Washita River, thence down said river to the line of the Tishomingo District, thence along said line to the line of the Panola District, thence down said line to the beginning point.

Section 4. For the first election under this Constitution, the thirteen (13) positions on the Tribal Legislature shall be apportioned among the four (4) districts pursuant to the number of registered voters who reside in each district together with those non-resident registered voters who formally designate their affiliation with one (1) of the four (4) districts. Each district shall have at least one (1) representative on the Tribal Legislature. Each nonresident registered voter shall choose one (1) district for the purpose of voting to choose a representative on the Tribal Legislature. On the date successful candidates are installed in office, there shall be a drawing of lots for each district to determine which representative will serve for a three (3) year term. There shall be a second drawing of lots among the remaining nine (9) members of the Tribal Legislature to determine those five (5) who are to serve two (2) year terms and the four (4) who will each hold office for one (1) year, in order to establish a system of staggered terms of office. In the event of a tie vote in the initial election, the flip of a coin will determine the winner. Thereafter, members of the Legislature shall be elected for three (3) year terms and shall serve until their successors are duly elected and installed.

Section 5. Within nine (9) months following the first election of officials under this Constitution, the Tribal Legislature shall adopt a plan for reapportionment based on the number of registered voters of the four (4)

districts, including those nonresidents who affiliate with each district. Apportionment based on the number of registered voters shall be used until such time a more reliable means can be established pursuant to legislative action.

Section 6. No person who has been convicted of a felony by a court of competent jurisdiction, shall be considered eligible for office in the Tribal Legislature.

ARTICLE VII
PRIVILEGES, DUTIES AND POWERS OF LEGISLATIVE DEPARTMENT

Section 1. The Tribal Legislature, at its first regular session each year, shall organize and elect officers from its membership. Officers to be elected are a Chairperson and a Secretary. A Recording Secretary and Sergeant-At-Arms (non-members of the Tribal Legislature) shall be nominated by the Chairperson, and placed in office by and with the advice and consent of the Tribal Legislature.

Section 2. The Chairperson shall preside over all meetings of the Tribal Legislature.

Section 3. The Secretary of the Tribal Legislature shall maintain all records and enactments of the Tribal Legislature. They shall be kept on file in the Chickasaw Nation Headquarters, Ada, Oklahoma and available for inspection by Chickasaw citizens during normal office hours. All such records and enactments of the Tribal Legislature shall be the property of the Chickasaw Nation.

Section 4. The Tribal Legislature shall enact rules and regulations pertaining to the Chickasaw Nation.

Section 5. The Tribal Legislature shall prescribe procedures and regulations for voter registration.

Section 6. The Tribal Legislature shall prescribe election procedures and regulations for tribal elections.

Section 7. The Tribal Legislature shall make decisions pertaining to the acquisition, leasing, disposition, and management of real property, subject to Federal Law.

Section 8. The Tribal Legislature shall sit as a court in all cases of impeachment; its decision shall be final.

Section 9. The Governor shall prepare an Annual Tribal Budget and present it to the Legislature for approval. Approval shall require a majority vote of the Legislature. Rejection, amendment or alteration shall be considered by legislative act subject to executive veto. Such veto shall be overridden only by an affirmative vote of at least nine (9) members of the Legislature.

Section 10. For all business of the Legislature, a quorum is required. A quorum consists of nine (9) members of the Legislature.

Section 11. The Tribal Legislature shall have the power to fix and prescribe salaries and allowances for all elected or appointed officials and employees of the Nation. The salary and allowances for elected and appointed officials shall not be increased or diminished during terms of office for which they have been elected. The Tribal Legislature will set a pay scale for all tribal employees.

Section 12. The Tribal Legislature shall adopt rules of procedure for operation of the Tribal Legislature within ninety (90) days after the initial installation of legislators.

ARTICLE VIII
SESSIONS OF THE TRIBAL LEGISLATURE

Section 1. Regular sessions of the Tribal Legislature shall be held on the third Friday of each month at 9:00 a.m. at the Chickasaw Nation Headquarters, Ada, Oklahoma, unless and until otherwise provided by the Tribal Legislature.

Section 2. Nine (9) members must be present to constitute a quorum.

Section 3. The Governor may call a special session of the Legislature at any time he deems necessary by notifying each member, by the most expedient way, at least twenty-four (24) hours in advance of the meeting and shall call a special session upon receipt of a letter signed by at least nine (9) members of the Tribal Legislature.

Section 4. All regular and special sessions shall be open to the citizens of the Nation.

Section 5. Roll call votes shall be recorded, showing how each member of the Tribal Legislature voted.

Section 6. Robert's Rules of Order shall be followed in conducting Tribal Legislature business unless in conflict with this Constitution.

ARTICLE IX
ORDER OF BUSINESS

The order of business at any regular or special session of the Tribal Legislature shall be as follows; provided, this order of business may be suspended by the Tribal Legislature for any meeting:

1. Call to Order
2. Roll Call
3. Reading of minutes of last session
4. Unfinished business
5. Reports of Committees
6. New business (comments from citizens)
7. Adjournment

ARTICLE X
EXECUTIVE DEPARTMENT

Section 1. The Supreme Executive power of this Nation shall be vested in a Chief Magistrate, who shall be styled "The Governor of the Chickasaw Nation."

Section 2. The Lieutenant Governor shall assist the Governor and perform all duties as assigned to him by the Governor.

Section 3. The Governor and the Lieutenant Governor shall run as a team and shall be elected for a term of four (4) years and shall serve until their successors have been elected and installed.

Section 4. Any citizen of the Chickasaw Nation who is at leasty thirty (30) years of age and who possesses no less than one-quarter (1/4) of Chickasaw Indian Blood may be eligible to become a candidate for the office of Governor or Lieutenant Governor.

Section 5. The Governor and the Lieutenant Governor must be registered to vote and must have been residents of the Chickasaw Nation for at least one (1) year immediately preceding any election for which they are candidates and must remain residents of the Chickasaw Nation during the tenure of their office.

Section 6. No person who has been convicted of a felony by a court of competent jurisdiction shall be considered eligible for either of the executive offices.

ARTICLE XI
PRIVILEGES, DUTIES AND POWER OF EXECUTIVE DEPARTMENT

Section 1. The Governor shall perform all duties appertaining to the office of Chief Executive. He shall sign official papers on behalf of the Nation.

Section 2. The Governor shall have power to establish and appoint committees, members, and delegates to represent the Chickasaw Nation, by and with the advice and consent of the Tribal Legislature.

Section 3. The Governor shall have power to veto any decision of the Tribal Legislature and it must be done within five (5) working days after passage and written presentation; provided, the Tribal Legislature may override the Governor's veto in accordance with Article VII, Section 9.

Section 4. The Governor shall prepare and submit an annual tribal budget to the Tribal Legislature.

Section 5. The Lieutenant Governor shall serve in the absence of the Governor and when serving shall have all the privileges, duties and powers of the Governor.

ARTICLE XII
JUDICIAL DEPARTMENT

Section 1. The Judicial authority of the Chickasaw Nation shall consist of a three (3) member court elected by popular vote by qualified voters of the Chickasaw Nation.

Section 2. Members of the Judicial Department must be qualified electors, citizens of the Chickasaw Nation and residents of the Chickasaw Nation during tenure of their office.

Section 3. Tribal Judges shall be elected for terms of three (3) years and shall serve until their successors are duly elected and installed. In the initial election, judges shall serve terms of one (1), two (2) and three (3) years to be determined by lot in order to establish staggered terms.

Section 4. On an annual basis, the three (3) judges shall select the presiding judge from among their number.

Section 5. No person who has been convicted of a felony by a court of competent jurisdiction shall be eligible for judicial office.

ARTICLE XIII
PRIVILEGES, DUTIES AND POWERS OF THE JUDICIAL DEPARTMENT

Section 1. The Judicial Department shall have jurisdiction to decide disputes by vote of two (2) members, arising under any provision of this Consti-

tution or any legislation enacted by the Tribal Legislature and such other jurisdiction as may be conferred upon it by the Tribal Legislature.

Section 2. Rules of procedure for the Judicial Department shall be prescribed by the Judicial Department within sixty (60) days of its members taking office and shall insure that the citizen receives due process of law and a prompt and speedy trial. Those procedures shall be presented to the Legislature which must act on those procedures within sixty (60) days after such presentation, otherwise, those procedures will become effective.

Section 3. The decisions of the Judicial Department shall be final.

Section 4. The Tribal Judicial Department shall have jurisdiction to hear claims regarding malapportionment. If a reapportionment plan is not adopted at least ninety (90) days before the election, then the Judicial Department shall have jurisdiction to prepare a reapportionment plan for submission to the Legislature.

ARTICLE XIV
INITIATIVE PETITION

Section 1. Upon submission to the Judicial Department of a valid petition, outlining the proposed measure, and signed by at least twenty percent (20%) of the registered voters of the Chickasaw Nation, it shall be the duty of the Tribal Legislature, within sixty (60) days, to submit the proposition to a vote of the electorate; provided, that if a petition is presented within one hundred eighty (180) days of the next regular election, the proposition shall be presented to the voters at that time.

Section 2. The election shall be conducted pursuant to rules and procedures prescribed by the Tribal Legislature.

Section 3. Passage of the proposition shall require a majority of votes cast; provided, at least thirty percent (30%) of the registered voters cast ballots.

ARTICLE XV
FILLING VACANCIES

Section 1. In case of death, resignation, impeachment, or recall of the Governor, the Lieutenant Governor shall immediately become Governor for the remainder of the unexpired term. The Chairperson of the Trial Legislature shall immediately succeed to the office of Lieutenant Governor for the unexpired term. The Tribal Legislature shall elect a member of the Legislature to serve the unexpired term of the Chairperson.

Section 2. In the event of vacancies occuring in the Tribal Judicial Department or Tribal Legislature, a special election shall be held within sixty (60) days of the vacancy, or reasonably delayed until the next regularly scheduled election for that position. The vacancy shall be filled by popular vote.

ARTICLE XVI
IMPEACHMENT AND RECALL OF OFFICIALS

Section 1. Impeachment

(a) Any elected official shall be subject to impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, becoming incapable of performing his duties or any offense involving moral turpitude while in office.

(b) Upon submission to the Judicial Department of a valid petition, stating the cause of action, and signed by not less than twenty-five percent (25%) of the registered voters residing within the district or area from which the official was elected, it will be the duty of the Judicial Department to determine the validity of the charges and file formal impeachment charges.

(c) The official against whom charges may be preferred, shall be entitled to a hearing by the Tribal Legislature under rules and procedures prescribed by the Tribal Legislature.

(d) The official against whom articles of impeachment are preferred, shall be suspended from the exercise of duties of his office during the pendency of his impeachment proceedings.

(e) The Tribal Legislature shall appoint a prosecutor to present the charges before the Tribal Legislature. Such prosecutor shall be a citizen of the Nation and shall not be employed or hold office in the Nation.

(f) The Tribal Legislature shall sit as a court in all cases of impeachment and its decision shall be final.

(g) The Tribal Legislature shall prescribe rules and procedures that are necessary to carry into effect the provisions of this Article.

(h) The ten (10) votes shall be required to impeach the official.

Section 2. Recall

(a) Upon submission to the Judicial Department of a valid petition, stating the cause for action, and signed by not less than twenty-five percent (25%) of the registered voters residing within the district or area from which the official was elected, it shall be the duty of the Tribal Legislature to call and conduct, within sixty (60) days, a recall election.

(b) The election shall be conducted pursuant to rules and procedures prescribed by the Tribal Legislature.

(c) Recall from office shall require a majority of votes; provided, thirty percent (30%) or more of the registered voters cast ballots.

(d) Only one (1) official shall be subject to recall at any given recall election.

(e) Any official shall be subject to the recall provision only one (1) time during his term of office.

ARTICLE XVII
OATH OF OFFICE

All elected or appointed officials shall take the following oath:

> I, _____, do solemnly swear (or affirm) that I will support, obey and defend the Constitutions of the Chickasaw Nation, and the United States of America and will discharge the duties of my office with fidelity, so help me God.

ARTICLE XVIII
AMENDMENT

Section 1. Proposed amendments to this Constitution may be initiated by either of the following methods:

(a) A resolution of the Tribal Legislature adopted by at least nine (9) affirmative votes.

(b) A valid petition submitted to the Tribal Legislature signed by not less than twenty percent (20%) of the registered voters of the Chickasaw Nation.

Section 2. Amendments proposed by either (a) or (b) in the above section shall be submitted to a vote of the electorate in an election called for that purpose by the Governor and conducted pursuant to rules and procedures prescribed by the Tribal Legislature.

Section 3. Any amendment adopted by a majority of the votes cast in the election shall be submitted to the Secretary of the Interior, or his authorized representative, for approval action. If no action is taken within thirty (30) days following its receipt by the Secretary's authorized representative, the amendment shall be deemed approved and it shall thereafter be effective.

ARTICLE XIX
EFFECTIVE DATE OF CONSTITUTION

This Constitution shall become effective when approved by the Secretary of the Interior and ratified by the Chickasaw people.

ARTICLE XX
APPROVAL

I, John W. Fritz, Deputy Assistant Secretary — Indian Affairs (Operations) by virtue of the authority delegated to me by 209 D.M. 8.3, do hereby approve this Constitution of the Chickasaw Nation of Oklahoma. It shall become effective upon ratification; provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal Law.

John W. Fritz
Deputy Assistant Secretary —
Indian Affairs (Operations)

Washington, D.C.
Date: July 15, 1983

ARTICLE XXI
CERTIFICATE OF RATIFICATION

Pursuant to the June 17, 1981, order of the U.S. District Court for the District of Columbia, as amended January 6, 1983, in Cravatt v. Watt, Civil No. 77-1664, the Deputy Assistant Secretary — Indian Affairs (Operations), on July 15, 1983, approved this Constitution and authorized the calling of an election for its ratification to be conducted on August 27, 1983. On August 27, 1983, the qualified voters of the Chickasaw Nation duly ratified /rejected this Constitution by a vote of _____ for, and _____ against. The results are hereby certified by members of the Chickasaw Election Commission shown below:

Fred L. Ragsdale, Jr., Arbitrator/Administrator

Charles Guy Tate, Representative for Plaintiffs

Sally Bell, Representative for Plaintiffs

Clarence Lee Cravatt, Representative for Plaintiffs

Pat Woods, Representative for Tribal Defendant

Ted Key, Representative for Tribal Defendant

Kenneth Meeler, Representative for Tribal Defendant

Ardmore, Oklahoma

Date: August 27, 1983

APPENDIX B

CHICKASAW NATION
ENACTMENT NO. 85-1

GAMING ACT

BE IT ENACTED by the Tribal Legislature of the Chickasaw Nation:

Section 1. Short Title.

This Act shall be cited as the "Chickasaw Gaming Act of 1984."

Section 2. Purpose.

The purpose of the gaming act is to make lawful and to regulate the conducting of certain games of chance by the authority of the Chickasaw Nation.

Section 3. Definitions.

As used in the gaming act:

A. **"Gaming"** shall mean the engaging of persons in a contest or activity for the purpose of amusement or gain.

B. **"Proceeds"** shall mean receipts from the sale of shares, tickets, or rights in any manner connected with participation in a game of chance or the right to participate therein, including any admission fee or charge, the sale of equipment or supplies, and all other miscellaneous receipts.

C. **"Chickasaw Nation"** shall mean the tribe of Indians located within the boundaries set forth in the Constitution of the Chickasaw Nation, adopted August 27, 1983, being duly recognized by the Secretary of Interior of the United States of America and other agencies of the United States of America and other governments, as a self-governing, independent, sovereign government; sometimes hereinafter called "Tribe."

D. **"Tribal Legislature"** shall mean the Tribal Legislature of the Chickasaw Nation, which is the recognized governing body of the Tribe, possessing plenary power over the people, land and property within the exterior boundaries of the Tribe.

E. **"Player"** shall mean any person, Indian or non-Indian and whether a Chickasaw Indian or not, paying some amount of United States currency to the Tribe or its agent, servant or employee for admission to and participation in gaming and who has a reasonable expectation of receiving a prize.

F. **"Prizes"** shall mean and refer to any United States currency, cash, or other property or thing of value awarded to a player of gaming, or players in a series of games.

G. **"Occasion"** shall mean a single gathering or session at which a series of successive games is played.

H. **"Person"** shall mean a natural person, either Indian or non-Indian, and either Chickasaw member or non-Chickasaw member.

I. **"Premises"** shall mean the room, hall, enclosure or outdoor area used for the purpose of gaming.

Section 4. Operations.

It shall be lawful for the Chickasaw Nation, its agents, servants and employees to perform, conduct, operate, maintain or supervise gaming or series of gaming events at any premises, on land owned by the Chickasaw Nation. It shall be unlawful for any other person, corporation, company, firm or other entity, except the Chickasaw Nation, to perform, conduct, operate, maintain or supervise gaming or series of gaming events on land owned by the Chickasaw Nation.

Gaming may be conducted each and every day of the week and at any hour of the day, except not later than 2:00 a.m. and not beginning a new occasion earlier than the next 10:00 a.m. following.

There shall be no limit as to the prize money or prizes for any single game or occasion.

All persons involved in the conduct of gaming must be bonafide employees of the Chickasaw Nation or bonafide employees of its agents, servants or employees.

No person of under the age of 21 years shall be allowed to participate in gaming.

Section 5. Name Tags.

All persons operating or assisting in the operation or conduct of any gaming shall wear legible tags evidencing their names and the legend and symbol of the Chickasaw Nation. Tags must be visible and worn by or otherwise affixed to all persons operating or assisting in the operation of gaming.

Section 6. Proceeds.

All of the proceeds derived from gaming, after payment of the prize money, expenses and fees, shall be collected by the Chickasaw Nation and deposited into the tribal treasury. The use of such proceeds shall be subject to the regular budgeting process.

NOW, THEREFORE, BE IT ENACTED that the Chickasaw Gaming Act of 1984 is hereby approved by the Tribal Legislature of the Chickasaw Nation.

CERTIFICATION

The foregoing was adopted by the Chickasaw Nation Tribal Legislature by a vote of 11 ayes, 0 nays and 2 abstained with a quorum being present at a meeting held on the 19th day of October 1984.

_____
Robert Stephens, Chairman
Chickasaw Tribal Legislature

_____
Overton Cheadle, Secretary
Chickasaw Tribal Legislature

Concur: _____
Overton James, Governor
Chickasaw Nation